

SENATE BILL 123

E4

8lr1315

By: **Senator Zirkin**

Introduced and read first time: January 11, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms – Prohibited Possession – Conviction for Harassment**

3 FOR the purpose of prohibiting a person from possessing a regulated firearm if the person
4 has been convicted of harassment; prohibiting a person from possessing a rifle or a
5 shotgun if the person has been convicted of harassment; making conforming changes;
6 and generally relating to possession of firearms.

7 BY repealing and reenacting, with amendments,
8 Article – Public Safety
9 Section 5–133(b), 5–133.3(b) and (d), and 5–205(b) and (e)
10 Annotated Code of Maryland
11 (2011 Replacement Volume and 2017 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article – Public Safety
14 Section 5–133.3(a)
15 Annotated Code of Maryland
16 (2011 Replacement Volume and 2017 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Public Safety**

20 5–133.

21 (b) Subject to § 5–133.3 of this subtitle, a person may not possess a regulated
22 firearm if the person:

23 (1) has been convicted of a disqualifying crime;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) has been convicted of a violation classified as a common law crime and
2 received a term of imprisonment of more than 2 years;

3 (3) **HAS BEEN CONVICTED OF A VIOLATION OF § 3-803 OF THE**
4 **CRIMINAL LAW ARTICLE;**

5 (4) is a fugitive from justice;

6 [(4)] (5) is a habitual drunkard;

7 [(5)] (6) is addicted to a controlled dangerous substance or is a habitual
8 user;

9 [(6)] (7) suffers from a mental disorder as defined in § 10-101(i)(2) of the
10 Health – General Article and has a history of violent behavior against the person or
11 another;

12 [(7)] (8) has been found incompetent to stand trial under § 3-106 of the
13 Criminal Procedure Article;

14 [(8)] (9) has been found not criminally responsible under § 3-110 of the
15 Criminal Procedure Article;

16 [(9)] (10) has been voluntarily admitted for more than 30 consecutive days
17 to a facility as defined in § 10-101 of the Health – General Article;

18 [(10)] (11) has been involuntarily committed to a facility as defined in §
19 10-101 of the Health – General Article;

20 [(11)] (12) is under the protection of a guardian appointed by a court under
21 § 13-201(c) or § 13-705 of the Estates and Trusts Article, except for cases in which the
22 appointment of a guardian is solely a result of a physical disability;

23 [(12)] (13) except as provided in subsection (e) of this section, is a
24 respondent against whom:

25 (i) a current non ex parte civil protective order has been entered
26 under § 4-506 of the Family Law Article; or

27 (ii) an order for protection, as defined in § 4-508.1 of the Family Law
28 Article, has been issued by a court of another state or a Native American tribe and is in
29 effect; or

30 [(13)] (14) if under the age of 30 years at the time of possession, has been
31 adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if
32 committed by an adult.

1 5-133.3.

2 (a) In this section, "Health Department" means the Maryland Department of
3 Health.

4 (b) A person subject to a regulated firearms disqualification under [§ 5-133(b)(6),
5 (7), (8), (9), (10), or (11)] **§ 5-133(B)(7), (8), (9), (10), (11), OR (12)** of this subtitle, a rifle
6 or shotgun disqualification under [§ 5-205(b)(6), (7), (8), (9), (10), or (11)] **§ 5-205(B)(7),
7 (8), (9), (10), (11), OR (12)** of this title, or prohibited from the shipment, transportation,
8 possession, or receipt of a firearm by 18 U.S.C. §§ 922(d)(4) or (g)(4) as a result of an
9 adjudication or commitment that occurred in the State may be authorized to possess a
10 firearm if:

11 (1) the person is not subject to another firearms restriction under State or
12 federal law; and

13 (2) the Health Department, in accordance with this section, determines
14 that the person may possess a firearm.

15 (d) An application for relief from a firearms disqualification shall include:

16 (1) a complete and accurate statement explaining the reason why the
17 applicant is prohibited from possessing a regulated firearm under [§ 5-133(b)(6), (7), (8),
18 (9), (10), or (11)] **§ 5-133(B)(7), (8), (9), (10), (11), OR (12)** of this subtitle or a rifle or
19 shotgun under [§ 5-205(b)(6), (7), (8), (9), (10), or (11)] **§ 5-205(B)(7), (8), (9), (10), (11),
20 OR (12)** of this title, or is prohibited from the shipment, transportation, possession, or
21 receipt of a firearm by 18 U.S.C. §§ 922(d)(4) or (g)(4) as a result of an adjudication or
22 commitment that occurred in the State;

23 (2) a statement why the applicant should be relieved from the prohibition
24 described in item (1) of this subsection;

25 (3) if the applicant is subject to a prohibition described in item (1) of this
26 subsection, a certificate issued within 30 days of the submission of the application on a form
27 approved by the Health Department and signed by an individual licensed in the State as a
28 physician who is board certified in psychiatry or as a psychologist stating:

29 (i) the length of time that the applicant has not had symptoms that
30 cause the applicant to be a danger to the applicant or others, or, if the disqualification
31 relates to an intellectual disability, the length of time that the applicant has not engaged
32 in behaviors that cause the applicant to be a danger to the applicant or others;

33 (ii) the length of time that the applicant has been compliant with the
34 treatment plan for the applicant's mental illness, or, if the disqualification relates to an
35 intellectual disability, the length of time that the applicant has been compliant with any

1 behavior plan or behavior management plan;

2 (iii) an opinion as to whether the applicant, because of mental illness,
3 would be a danger to the applicant if allowed to possess a firearm and a statement of
4 reasons for the opinion; and

5 (iv) an opinion as to whether the applicant, because of mental illness,
6 would be a danger to another person or poses a risk to public safety if allowed to possess a
7 firearm;

8 (4) if the applicant is prohibited from possessing a firearm under [§
9 5-133(b)(11)] **§ 5-133(B)(12)** of this subtitle or [§ 5-205(b)(11)] **§ 5-205(B)(12)** of this
10 title:

11 (i) a copy of all pleadings, affidavits, and certificates submitted into
12 evidence at the guardianship proceeding; and

13 (ii) all orders issued by the court relating to the guardianship,
14 including, if applicable, an order indicating that the guardianship is no longer in effect;

15 (5) a signed authorization, on a form approved by the Health Department,
16 allowing the Health Department to access any relevant health care, mental health,
17 disability, guardianship, and criminal justice records, including court ordered or required
18 mental health records, of the applicant for use in determining whether the applicant should
19 be relieved from a firearms disqualification;

20 (6) three statements signed and dated within 30 days of submission to the
21 Health Department on a form designated by the Health Department attesting to the
22 applicant's reputation and character relevant to firearm ownership or possession including:

23 (i) at least two statements provided by an individual who is not
24 related to the applicant; and

25 (ii) contact information for each individual providing a statement;
26 and

27 (7) any other information required by the Health Department.

28 5-205.

29 (b) A person may not possess a rifle or shotgun if the person:

30 (1) has been convicted of a disqualifying crime as defined in § 5-101 of this
31 title;

32 (2) has been convicted of a violation classified as a crime under common
33 law and received a term of imprisonment of more than 2 years;

1 (3) **HAS BEEN CONVICTED OF A VIOLATION OF § 3-803 OF THE**
2 **CRIMINAL LAW ARTICLE;**

3 (4) is a fugitive from justice;

4 [(4)] (5) is a habitual drunkard as defined in § 5-101 of this title;

5 [(5)] (6) is addicted to a controlled dangerous substance or is a habitual
6 user as defined in § 5-101 of this title;

7 [(6)] (7) suffers from a mental disorder as defined in § 10-101(i)(2) of the
8 Health – General Article and has a history of violent behavior against the person or
9 another;

10 [(7)] (8) has been found incompetent to stand trial under § 3-106 of the
11 Criminal Procedure Article;

12 [(8)] (9) has been found not criminally responsible under § 3-110 of the
13 Criminal Procedure Article;

14 [(9)] (10) has been voluntarily admitted for more than 30 consecutive days
15 to a facility as defined in § 10-101 of the Health – General Article;

16 [(10)] (11) has been involuntarily committed to a facility as defined in §
17 10-101 of the Health – General Article;

18 [(11)] (12) is under the protection of a guardian appointed by a court under
19 § 13-201(c) or § 13-705 of the Estates and Trusts Article, except for cases in which the
20 appointment of a guardian is solely a result of a physical disability;

21 [(12)] (13) except as provided in subsection (c) of this section, is a
22 respondent against whom:

23 (i) a current non ex parte civil protective order has been entered
24 under § 4-506 of the Family Law Article; or

25 (ii) an order for protection, as defined in § 4-508.1 of the Family Law
26 Article, has been issued by a court of another state or a Native American tribe and is in
27 effect; or

28 [(13)] (14) if under the age of 30 years at the time of possession, has been
29 adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if
30 committed by an adult.

31 (e) A person who is disqualified from owning a rifle or shotgun under subsection

1 [(b)(6), (7),] **(B)(7)**, (8), (9), (10), [or] (11), **OR (12)** of this section may seek relief from the
2 disqualification in accordance with § 5-133.3 of this title.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2018.